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Signed and Filed: October 05, 2010

THOMAS E. CARLSON
U.S. Bankruptcy Judge

Attorneys for Official Committee
of Equity Security Holders

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
CMR MORTGAGE FUND, LLC,
CMR MORTGAGE FUND II, LLC,
CMR MORTGAGE FUND III, LLC,
Debtors.

Case Nos. 08-32220 TEC
09-30788 TEC
09-30802 TEC

Chapter 11

**ORDER APPROVING CONFIRMATION
OF EQUITY COMMITTEE AND
DEBTORS JOINT PLAN OF
REORGANIZATION DATED JUNE 24,
2010**

- ☐ Affects **FUND I**
☐ Affects **FUND II**
☐ Affects **FUND III**
☒ Affects **ALL FUNDS**

Date: September 22, 2010
Time: 9:30 a.m.

Judge: Hon. Thomas E. Carlson

The hearing on confirmation of the Equity Committee And Debtors Joint Plan Of Reorganization Dated June 24, 2010 (the "Plan"), filed on June 24, 2010, in the above-captioned cases of CMR Mortgage Fund, LLC ("Fund I"), CMR Mortgage Fund II, LLC ("Fund II"), and CMR Mortgage Fund III, LLC ("Fund III") (Fund I, Fund II, and Fund III collectively, the "Funds" or "Debtors"), was held on August 4, 2010, August 10, 2010, and September 22, 2010. Appearances of counsel for parties in interest were as noted on the record of the hearing. The Official Committee of Equity Security Holders ("Equity Committee") and Fund I, Fund II, and

1 Fund III are jointly proponents of the Plan.

2 The Court has considered:

3 (i) the Plan;

4 (ii) the Disclosure Statement For Equity Committee And Debtors Joint Plan Of
5 Reorganization Dated June 24, 2010, submitted with respect to the Plan and previously approved
6 as containing adequate information under 11 U.S.C. § 1125;

7 (iii) the Ballot Tabulation And Submission Of Ballots for the Plan filed on July 30,
8 2010;

9 (iv) the written objections to confirmation of the Plan;

10 (v) the evidence submitted and proffered in connection with the hearing on
11 confirmation of the Plan and the representations made on the record of the hearing; and

12 (vi) the arguments of counsel for the Plan proponents and those parties who filed
13 objections to the Plan.

14
15 THE COURT FINDS THAT:

16 A. The Court has jurisdiction of this matter pursuant to 11 U.S.C. §§ 1334(a) and 157,
17 and venue is proper under 11 U.S.C §§ 1408 and 1409. This matter is a core proceeding pursuant
18 to 11 U.S.C. § 157(b)(2)(L).

19 B. Notice of the hearing on confirmation of the Plan required under Rule 2002(b) and
20 (d) of the Federal Rules of Bankruptcy Procedure has been given, and no other or further notice is
21 necessary.

22 C. The proponents of the Plan provided “adequate disclosure” within the meaning of
23 § 1125(a) of the Bankruptcy Code with respect to the Plan and the solicitation of acceptances
24 thereon.

25 D. The Plan complies with all applicable provisions of the Bankruptcy Code.

26 E. The Plan has been proposed in good faith and not by any means forbidden by law.

27 F. The proponents of the Plan, the Equity Committee and the Funds, have complied
28 with all applicable provisions of the Bankruptcy Code.

1 G. The Plan has been accepted by the requisite majorities in all impaired classes of
2 creditors and equity holders. No class of creditors or equity holders has been deemed to reject the
3 Plan.

4 H. The Plan has been accepted by an impaired class of creditors, determined without
5 including any acceptance of the Plan by any insider.

6 I. All other applicable requirements of § 1129(a) of the Bankruptcy Code are
7 satisfied.

8 J. Confirmation of the Plan is in the best interests of creditors and equity holders of
9 the Funds.

10 Accordingly, and good cause appearing therefor,

11 IT IS HEREBY ORDERED that:

12 1. The Plan is confirmed.

13 2. All objections to confirmation of the Plan that have not been withdrawn are
14 overruled.

15 3. The provisions of the Plan shall bind all parties in interest, including Fund I, Fund
16 II, Fund III, the Wind-Down Trust formed under the Plan ("Wind-Down Trust"), and all creditors
17 and equity interest holders of Fund I, Fund II, and Fund III, whether or not the respective claims
18 and interests of such creditors and interest holders are impaired under the Plan, and whether or not
19 such creditors and interest holders have filed proofs of claim or interest or are deemed to have
20 filed proofs of claim or interest.

21 4. In the required notice of entry of order confirming the Plan, the Equity Committee
22 shall give notice consistent with the provisions of the Plan of the applicable bar dates for (i) any
23 claims for rejection of executory contracts under the Plan, (ii) any claims for allowance of
24 administrative expenses incurred prior to the Effective Date of the Plan (as defined in the Plan)
25 pursuant to 11 U.S.C. § 507(a)(1) or § 507(b), and (iii) all applications for compensation of
26 professional persons rendered prior to the Effective Date. Any claims of the kind specified in
27 subparagraphs (i), (ii) or (iii) foregoing shall, if not timely filed, be forever barred.

28 5. The Court retains jurisdiction after the Effective Date of the Plan over all matters

1 specified in Article IX (Retained Jurisdiction) of the Plan.

2 6. (a) Notwithstanding confirmation of the Plan and any provision of the Plan to the
3 contrary, all matters concerning any Investor Action under Rule 23 or Rule 23.1 of the Federal
4 Rules of Civil Procedure or their state-law equivalent (including Bergman et al. vs. California
5 Mortgage and Realty, Inc. et al., Adversary Proceeding No. 10-03107, a proposed class action
6 now pending in this Court), including without limitation (i) whether it is properly filed as a class
7 action, (ii) selection of the representative plaintiffs (as to derivative as well as any other claims),
8 (iii) whether a class if certified should be a mandatory class or an opt-out class, (iv) whether a
9 channeling injunction is appropriate, (v) in what court trial of such Investor Action should take
10 place, and (vi) any other matters within the scope of Rules 23 and 23.1 or their state-law
11 equivalent are hereby reserved for determination in such Investor Action.

12 (b) Notwithstanding confirmation of the Plan and any provision of the Plan to
13 the contrary, neither the Plan nor the automatic stay of 11 U.S.C. § 362(a) shall create or constitute
14 an injunction restraining any litigation between or among non-debtor plaintiffs and/or non-debtor
15 defendants, including but not limited to the pending actions described in Exhibit C to the Plan at
16 6:16-21. Whether any injunction should issue to restrain such litigation shall be left to the court
17 trying the Investor Action.

18 7. Consistent with this Court's order granting the Motion For Approval Of Settlement
19 Among The funds, The Equity Committee, And Canpartners Realty Holding Company IV LLC
20 And Canyon-Related Entities, Carr, SCD, and SC Development Pursuant To Bankruptcy Rule
21 9019 ("Settlement Motion"), filed in the Funds' Chapter 11 cases on September 1, 2010, within
22 three (3) business days of the Effective Date of the Plan the Wind-Down Trust shall execute the
23 Settlement Agreement (as defined in the Settlement Motion) as a party thereto, and become
24 immediately bound to the terms of the Settlement Agreement as if it has been a party thereto from
25 the date of original execution, and without the need for any further action assume the rights and
26 obligations of the Funds thereunder. Nothing in Paragraph 6(b) of this Order shall affect the
27 injunction contained in this Court's order granting the Settlement Motion, which is and shall
28 remain effective following confirmation of the Plan.

1 8. For purposes of the Plan, the Amended and Restated Standstill Agreement between
2 the Debtors and certain clients of Oxford Investment Partners LLC, and approved by this Court on
3 January 22, 2010, shall be deemed to have been expressly assumed on or before the Effective
4 Date.

5 9. All of the property of the bankruptcy estates of Fund I, Fund II, and Fund III shall
6 vest in the Wind-Down Trust upon the Effective Date of the Plan, free and clear of all claims of
7 creditors and equity interest holders, subject to the provisions of the Plan, and shall be
8 administered by the Wind-Down Trust. Transfer of property by the Wind-Down Trust and
9 issuance of beneficial interests in the Wind-Down Trust under the Plan shall be pursuant to the
10 Plan and free from taxation to the extent provided by 11 U.S.C. § 1146(a).

11 10. Because the Plan is a liquidating Plan, and pursuant to 11 U.S.C. § 1141(d)(3),
12 entry of this order shall not act as a discharge of any debt of Fund I, Fund II, or Fund III that arose
13 prior to confirmation of the Plan. However, neither the Wind-Down Trust, its trustee, nor any
14 employee, agent or other representative of them shall have any liability for such debts of the Funds
15 to any creditors or interest holders of Fund I, Fund II, or Fund III other than to administer the
16 Wind-Down Trust and make the distributions expressly provided for under the Plan.

17 11. Article VIII, Section B, of the Plan is hereby modified to provide that all fees and
18 expenses of outside professionals employed by the Wind-Down Trust (including without
19 limitation attorneys and accountants) ("Professional Fees") shall be subject to review by creditors,
20 equity interest holders, and this Court. Such review shall be provided as follows:

21 (a) Within 30 days after the end of each calendar quarter, the Wind-Down Trust
22 shall file with this Court, and serve on the Post-Effective Date Limited Notice List established
23 under the procedures of Article VII, Section G, of the Plan, a summary of Professional Fees for
24 such quarter with notice of opportunity to object and request review by the Court.

25 (b) If within 20 days after service of such summary, no party in interest serves on
26 the Wind-Down Trust an objection, the Professional Fees shall not be subject to further review.

27 (c) If any party in interest objects within 20 days after service of such summary
28 and requests review, the Wind-Down Trust shall file with the Court a detailed statement of the

1 Professional Fees and set the matter for hearing on 20 days notice to the objecting party(ies). At
2 the hearing on the matter the Court shall determine the reasonableness of the Professional Fees.
3 Any amounts disallowed as not reasonable by the Court shall be returned by the recipient
4 professional to the Wind-Down Trust.

5 12. On and after the Effective Date, the trustee of the Wind-Down Trust shall have the
6 power to take all actions authorized by the Plan, including but not limited to (a) acting in the name
7 of the Funds or any of them as necessary or appropriate to dissolve the Funds, (b) acting in the
8 name of the Funds or any of them to prosecute Avoidance Actions and/or Retained Claims
9 notwithstanding dissolution of the Funds, and (c) exercising the powers of the Funds under the
10 operating agreements for REO Entities notwithstanding dissolution of the Funds.

11 13. The Plan effectuates substantive consolidation of the Debtors. Accordingly, after
12 the Effective Date of the Plan, all filings shall be made in – and only in – Case No. 08-32220.
13 Required post-confirmation payments to the United States Trustee, and required post-confirmation
14 quarterly reports to the United States Trustee, shall be made in – and only in – Case No. 08-3220.

15 14. On and after the Effective Date, all persons who have held, currently hold, or may
16 hold a claim or interest treated or provided for pursuant to the Plan are permanently enjoined from
17 taking any of the following actions on account of such claim or interest: (i) commencing or
18 continuing, in any manner and in any place, any action or proceeding against the bankruptcy
19 estate(s) of Fund I, Fund II, or Fund III; (ii) enforcing, attaching, collecting, or recovering in any
20 manner any judgment, award, decree or other order against the bankruptcy estate(s) of Fund I,
21 Fund II, or Fund III; (iii) creating, perfecting or enforcing any lien against property of the
22 bankruptcy estate(s) of Fund I, Fund II, or Fund III without leave of the Bankruptcy Court;
23 (iv) taking any action to obtain possession of property of the bankruptcy estate(s) of Fund I, Fund
24 II, or Fund III or to obtain possession of property from the bankruptcy estate(s) of Fund I, Fund II,
25 or Fund III or to exercise control over the bankruptcy estate(s) or property of the bankruptcy
26 estate(s) of Fund I, Fund II, or Fund III; and (v) taking any of the actions proscribed in subsections
27 (i) – (iv) above against the Wind-Down Trust, in any manner and in any place, that does not
28 comply with or is inconsistent with the provisions of the Plan and this Order. Any person injured

1 by any willful violation of such injunction shall be entitled to recover actual damages, including
2 costs and professional fees and, in appropriate circumstances, punitive damages from the willful
3 violator.

4 15. In the event of any inconsistency between the provisions of the Plan and this order,
5 the provisions of this order shall control.

6 16. In serving notice of confirmation of the Plan, the Equity Committee shall serve a
7 copy of this order with such notice, but need not attach a copy of the Plan. The notice of
8 confirmation of the Plan shall prominently note the process by which creditors and equity interest
9 holders may place their names on the Post-Effective Date Limited Notice List provided for under
10 Article VII, Section G, of the Plan.

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12 * * * END OF ORDER * * *
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COURT SERVICE LIST

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